

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.**

CRIMINAL APPEAL NO.449 OF 1990

The State of Maharashtra : Appellant.

versus

Tukaram Changu Patil,

Age 56. R/o. Chirner(Bhom),

at present Wadwali-Chorgundi : Respondent.

Tal.Alibag. (Org.Accused)

Mr.D.R.More, APP, for the State.

Mr.R.V.Pawaskar i/by Mr.S.M.Gorwadkar for the
respondent.

CORAM : D.G.DESHPANDE

S.R.SATHE, JJ.

DATED : JANUARY 22, 2007.

JUDGMENT [PER D.G.DESHPANDE, J.]

1. Heard learned APP for the State and
learned advocate for the accused. This appeal is

filed by the State against acquittal of accused under Section 302 of the Indian Penal Code. The accused was residing in a hut in his agricultural land at village Wadawali, Tal.Alibag. There was one more hut in his field. The accused had allowed his son-in-law Ganesh and daughter Mathura to live in the said hut. Both the accused and his son-in-law Ganesh were residing separately in the aforesaid huts. On 3.2.1987 Ganesh asked his wife Mathura to demand cash amount of Rs.200/- from the accused. Accordingly Mathura demanded the amount. But the accused refused to pay the said amount and paid only Rs.50/-. The deceased got annoyed and left his house at about 10 a.m. He did not return till 10 '0' clock at night. He was drunk when he came back. He started abusing the accused. When the accused found that the abuses were intolerable, he went to the hut of Ganesh i.e. his son-in-law. When Ganesh saw the accused in the hut, he took out an axe, raised it to assault the accused. At that time, the accused pushed him on the cot. Ganesh fell down and the axe also fell down. The accused is alleged to have taken axe and gave blows on head, face, chest and other parts of the body of Ganesh. Ganesh died on the

spot. The accused is alleged to have confess about the assault to Ganesh to his daughter and his sons. Then the accused asked Mathura to go to the brother of deceased Ganesh who was living at village Navenagar-Pezari. At about 4.30 a.m. Mathura and her two brothers went to village Navenagar. They informed this incident to Arun, the brother of Ganesh and all of them came back to the hut of Ganesh. The father of Ganesh Kusha Patil also came there and the accused is again alleged to have confessed to have caused death of Ganesh. Then Arun and Kusha Patil went to police station and lodged a complaint. Offence was registered. The police went to scene of offence. The dead body of Ganesh was sent for post mortem. The accused made statement to the police under Section 27 of the Evidence Act and the axe was recovered from a bush near the stream which was flowing from the backside of the hut of the accused. The police seized blood stained lungi of the accused. All those articles were sent to the C.A. and then charge sheet was filed. The prosecution tried to prove its case against the accused on the basis of extra judicial confession. The trial Court disbelieved the case of the prosecution and acquitted the accused.

Hence this appeal by the State.

2. At the outset, the learned advocate for the accused contended that since this is an appeal against acquittal by the judgment dated 9th March 1990, this Court should not interfere in the acquittal unless the prosecution was able to show that the judgment of the trial Court was perverse. He also argued that if two views were possible in a given set of facts and the view of the trial court was found reasonable then no inference is required. He also pointed out that deceased Ganesh was married with Mathura - the daughter of accused, ten years before the incident. The accused was maintaining Ganesh and Mathura since then for the last ten years. Ganesh and Mathura had also a son. The accused has served abroad and collected money and then returned to his native place and then he helped his daughter and son-in-law to settle. In these circumstances, it was the case of accused before the trial Court that over the demand of Rs.200/-, there was no reason for the accused to commit murder of his son-in-law. The trial court also considered that when Ganesh returned till 10 '0'

clock, the accused and Mathura both waited for Ganesh to take meals and, when Ganesh returned, he was found drunk.

3. Admittedly, neither Mathura nor any other person had seen the assault and the case of the prosecution is mainly rest on the extra judicial confession of the accused. The trial Court has held that there was no reason for the accused to confess to any one about his crime. The conduct of the accused immediately after the so called assault in asking Mathura and his sons to go to the brother of deceased Ganesh to inform about the condition of Ganesh was also considered by the trial Court as an indication not of the guilt of accused but of his innocence. The trial court also held that if the accused had role in committing murder of Ganesh, he would not have taken care to see that others should be informed immediately and then after arrival of stranger or relatives of Ganesh, he would not have confessed to them about the crime. Further the accused had, according to the witnesses Arun and Kusha, followed them to the police station and he was present when the report was being lodged. This conduct of the accused was also considered by the

trial court as an indication not of his guilty conscious but of his innocence.

4. So far as recovery of axe is concerned, the trial Court held that the axe was recovered from open place which is accessible to all and, therefore, the trial court disbelieved the evidence to connect the accused with the said discovery.

5. In view of this background and circumstances, it cannot be said that the reasons given by the trial Court are perverse. The total conduct of the accused, as revealed from the evidence and as discussed by the trial court, takes away the force of the prosecution case that the accused had murdered his son-in-law after ten years of the marriage for a paltry reason and for no substantial, sufficient and enraging provocation.

6. One more circumstance was brought to our notice by the defence lawyer from the evidence of P.W.2. Kusha Joma Patil. He is the father of

deceased Ganesh to whom the so called extra judicial confession was made by the accused. This witness (PW 2) admitted in his cross examination that his son Prabhakar was serving in police department and he was attached to Alibag Police Station at that time and he was still there on the date of evidence in court. P.W.2 also admitted that Ganesh, his wife and their children were dependent on the accused for their maintenance. The learned advocate for the accused, therefore, contended that taking advantage of the fact that Prabhakar - the son of P.W.2 was serving in police department, the story of extra judicial confession appears to have introduced in this case. Since the job of the defence to create doubt about the prosecution case, this circumstance coupled with the conduct of accused is sufficient to create doubt about the so called extra judicial confession. P.W.1 Arun who is the brother of deceased Ganesh also admitted in his cross examination that Ganesh had assaulted his father a year ago causing fracture to the leg of the father and, that the father had lodged complaint to the police and the police had filed chapter case against Ganesh. He also admitted in the cross examination that the

accused was telling Ganesh that he need not worry for his livelihood and the accused is ready to maintain him and his family.

7. It is pertinent to note that when Mathura went to her father-in-law Kusha and brother-in-law Arun she did not tell them that Ganesh was assaulted by accused. She simply told them that Ganesh sustained injuries. If, according to Mathura, her father had confessed about killing Ganesh and he himself sent her to the father and brother of Ganesh, then there was no reason for Mathura not to disclose to P.W.1 and 2 about the so called extra judicial confession.

8. It is also pertinent to note in this case that the FIR in this case is not lodged by Mathura but by Arun on the basis of so called extra judicial confession. He has no personal knowledge about the incident. Admittedly, he was not there. In the FIR also Arun does not say that the accused made any extra judicial confession to Mathura which in turn Mathura narrated to him. So far as Mathura is concerned she is examined by the prosecution as P.W.3. She

has stated that on the date of death of her husband, her husband had gone to Poinad. He returned at about 10 in the night. She was in the house of her father. Her husband directly went to his house. She took his dinner and her father asked her to go her house. When she returned to her house, she saw her husband dead with injuries. She then shouted and then her father, brothers and sisters-in-law rushed to her house. Nowhere Mathura says that while she was in the hut of her father, the father left her alone, proceeded to another hut where Ganesh had gone and when father returned back, his clothes were stained with blood. This is an important aspect of the matter which is totally missing in the evidence of Mathura. Since Mathura is the only person who was in the neighbourhood at the relevant time, absence of this part in her evidence is sufficient to create doubt about the role of the father as alleged by the prosecution.

9. It is true that Mathura, so far as extra judicial confession is concerned, did not support the prosecution. She was declared hostile. But the fact remains that she is confronted only with this aspect of the matter and nothing-else. If

at all Mathura was in the hut of the accused and from there accused had gone to the hut where Ganesh had gone and had assaulted Ganesh, then firstly the accused would have no time to throw the axe and, Mathura would not have failed to notice blood stains on his clothes. She has not stated anything like that and she was not cross examined by the APP. In view of this, it cannot be said that the judgment of the trial court is perverse. The trial Court has taken a view that is reasonable, plausible, just and proper and, therefore, no interference is required. We, therefore, pass the following order :-

:ORDER:

The appeal is dismissed.

The accused is on bail. His bail bond stands cancelled.

[D.G.DESHPANDE, J]

[S.R.SATHE, J]